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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

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In the Matter of)	EB Docket No. 07-197
)	
Kurtis J. Kintzel, Keanan Kintzel, and)	File No. EB-06-IH-5037
all Entities by which they do business)	FRN: 0007179054
before the Federal Communications)	
Commission)	NAL/Acct. No. 200732080029

ORDER

Issued: January 3, 2008 ; Released: January 4, 2008

On October 31, 2007, the Enforcement Bureau ("Bureau") served Request for Admission of Facts and Genuineness of Documents (Request) on parties Avatar Enterprises, Inc. ("Avatar"), and a separate Request was served on Kurtis J. Kintzel and Keanan Kintzel ("Kintzel Brothers"). On November 14, 2007, Avatar and the Kintzel Brothers asserted jurisdictional objections, Avatar as to some Requests and the Kintzel Brothers as to all requests.

Avatar responded to Requests 1 through 13 but objected to Requests 14 through 21 on the following ground:

Objection; the question is improper because Avatar Enterprises, Inc., is not bound by the Consent Decree. The Company is not subject to FCC oversight, thus the FCC exceeded its subject matter jurisdiction by attempting to bind Avatar Enterprises, Inc., to the Consent Decree. The party objects to the definition of "Avatar" provided by the Enforcement Bureau, as stated in the Answer to question 1.

Kintzel Brothers responded to each and every Request as follows:

Objection; the question is improper because directed to [Kurtis J. Kintzel or Keanan Kintzel] individually, although the Order to Show Cause does not allege any facts that would justify piercing the corporate veil under existing law, or that would otherwise make the question proper. The question should be directed to the corporation.

On December 4, 2007, the Bureau filed separately, Motion for Ruling on Objections by Avatar and Motion for Ruling on Objections by Kintzel Brothers. In each Motion, the Bureau seeks an order denying the aforesaid objections of Avatar and Kintzel Brothers, and directing those parties to either admit or deny the Requests.

On December 11, 2007, Avatar and Kintzel Brothers filed Oppositions. Avatar asserts that its objection to answering Requests 14 – 41 is justified because the Consent Decree which was allegedly violated contains “incorrect information suggesting that Avatar Enterprises, Inc. ever sold telecommunications services.” From that assertion as a premise, Avatar argues that it is not subject to FCC oversight and that the FCC’s actions with respect to Avatar “have been *ultra vires* its authority and are void.” Kintzel Brothers assert they have answered the Bureau’s Requests as required by Commission rule, and base their objections on the principle of “limited liability” which may be asserted by a corporate shareholder to avoid liability of a corporation. Kintzel Brothers admit only that a shareholder of a wrongdoing corporation could be held liable by “piercing the corporate will”. But in this case, assert the Kintzel Brothers, there are no allegations of fraud or any other justification for “veil-piercing.”

Analysis

In this case, the Commission issued an *Order to Show Cause and Notice of Opportunity for Hearing* (“OSC”) on September 10, 2007, 22 FCC Rcd 22 (2007). The Commission charges that:

[E]ntities providing interstate common carrier services owned and controlled by the Kintzel [B]rothers apparently willfully and repeatedly violated multiple terms of a Consent Decree to which they were signatories and apparently willfully and repeatedly violated multiple Commission rules and provisions of the Act relating to the provisions of interstate common carrier services. Such apparent violations, and a lengthy history of noncompliance before the Commission, raise material and substantial questions regarding the basic qualifications of the Kintzel [B]rothers to engage in the provision of interstate common carrier services now and in the future.

Based on such clear notice from the Commission, the Bureau initiated routine discovery in order to prepare for hearing. The Commission expects cooperation of parties in discovery and has issued the following mandate:

When the discovery procedures are invoked, parties and counsel are expected to direct themselves with energy to their successful completion and to take extraordinary measures, if necessary, to avoid undue delay in commencement of the hearing.

The Bureau elected to begin the discovery process by serving routine requests for the admission of facts and the genuineness of documents preliminary to taking depositions. The Commission's rules expect full and complete answers to such requests while providing for objection only to prevent injustice (e.g. incrimination, attorney-client privilege, fishing expedition). The relevant Rule provides:

Written objections [may be asserted] on the ground that some or all of the requested admissions are privileged or irrelevant *or that the request is otherwise improper* in whole or in part.

47 C.F.R. §1.246(b) (Emphasis added.) The Rule also requires substantive answers even to questions which are objected to only in part, and there is a "good faith" component that is specifically included in the Rule:

[W]hen good faith requires that a party deny only a part or a qualification of a matter of which an admission is requested, he shall specify so much of it as is true and deny only the remainder.

Id.

It is significant to recognize that Avatar's principles and agents are the Kintzel Brothers who have once before experienced discovery in connection with the earlier proceeding in which the parties executed a Consent Decree. *See HDO, supra* at Paras. 2-5. Based on Bureau discovery in that earlier proceeding and before the Consent was signed, there were two separate rulings on motions for partial summary decision that found non-disqualifying violations of Commission rules. *See Business Options, Inc.* (EB Docket No. 03-82) *Memorandum Opinion and Order*, FCC 03M-38, released December 23, 2003; and *Memorandum Opinion and Order*, FCC 03M-54, released December 9, 2003. Thus, Avatar and the Kintzel Brothers have experience in complying with Bureau discovery under Commission rules. Even more significantly, the Requests that Avatar and Kintzel Brothers refuse to answer on unfounded assertions of corporate *ultra vires*,¹ are not seeking admissions of liability.

The Bureau is seeking only non-privileged information through Commission sanctioned discovery that for discovery purposes is "relevant to the hearing issues" and that is "reasonable calculated to lead to the discovery of admissible evidence." 47 C.F.R. §1.311(b). That standard is sufficiently broad to encompass all Requests and no further clarifications of the Requests are needed.

¹ *Ultra vires* are "acts beyond the scope of the powers of a corporation, as defined by its charter or laws of state of incorporation." By doctrine of *ultra vires*, "a contract made by a corporation beyond the scope of its corporate powers is unlawful." *Black's Law Dictionary*, 5th Edition, (1979) at 1365 (case citations omitted).

The Bureau has served 21 straightforward, uncomplicated Requests on Avatar, 13 of which have been denied or admitted, and 8 of which have been subject to objection. The Requests denied by Avatar include stock ownership by individual Kintzel Brothers; affiliations of Avatar with related companies named in the Consent Decree and the *HDO*; and readily verifiable delinquency in payments of voluntary contribution under the Consent Decree. Avatar even denies that it is bound by the Consent Decree between the Commission and Business Options, Inc. because Avatar never sold communications or telephone services and therefore is not subject to Commission oversight. And Avatar objects to the definition of Avatar used by the Bureau. Avatar admits that Kurtis J. Kintzel is a director of Avatar and that he holds a 72 percent equity interest in Buzz, but denies that Buzz is an affiliate of Avatar. Mere denials of affiliations without more explanation fail to meet the duty to make all efforts to fully comply. In that connection, it is noted that Avatar is defined in the Consent Decree, *inter alia*, as “any entity owned, directed or controlled by Avatar or its principals Kurtis J. and Keanan Kintzel” and it is inconsistent to deny affiliations which fit reasonably within that definition.


The Bureau served individual Requests on the Kintzel Brothers which include routine requests to admit to genuineness of documents and signatures (68 Requests for Kurtis and 53 Requests for Keanan). With respect to each request there is an objection by the Kintzel Brothers that is based on an asserted impropriety in seeking to “pierce the corporate veil under existing law,” followed by a statement that “the question should be directed to the corporation.” Such answers as to the Kintzel Brothers are grossly inadequate and fail to meet the obligation to take “extraordinary measures” to respond to discovery requests.

Rulings

Accordingly, IT IS ORDERED that the Requests for Admissions of Fact and Genuineness of Documents served by the Enforcement Bureau on October 31, 2007, ARE APPROPRIATE, the objections and denials ARE INSUFFICIENT under Commission Rules, and Avatar Enterprises, Inc. and Kurtis J. Kintzel and Keanan Kintzel ARE DIRECTED to prepare and serve Supplemental Answers by **January 24, 2008**, to each Request not fully answered.²

SO ORDERED.³

FEDERAL COMMUNICATIONS COMMISSION



Richard L. Sippel
Chief Administrative Law Judge

² The assertions of “*ultra vires*” and “piercing corporate veil” are rejected here.

³ Courtesy copies of Order were sent by e-mail to each counsel.